UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

HINDS COUNTY HUMAN RESOURCE AGENCY Employer and INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL-CIO[1] Petitioner	Case 18-RC-16579 (formerly 15-RC-8239)

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Thereafter, pursuant to an Order Transferring Case from Region 15 to Region 18 issued by General Counsel Frederick L. Feinstein on November 12, 1999, this matter was transferred to me for issuance of a Decision.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The Petitioner's name appears as amended at the hearing.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

The Employer provides programs and services to ameliorate the causes and conditions of poverty in Hinds County, located in the State of Mississippi. The Employer's facilities are located in Jackson, Mississippi. The Employer, contrary to the Petitioner, contends that jurisdiction should not be exercised over its operation because it was created directly by the State and therefore constitutes a department or administrative arm of the government, and/or because it is administered by individuals who are responsible to public officials or to the general electorate.

The Employer was created by the Board of Supervisors of Hinds County. The Hinds County Board of Supervisors (herein HCBS) is elected by the general electorate of the county. Each of the five members of the HCBS represents a separate geographical district of the county.

The Mississippi Legislature, by statute, empowered boards of supervisors and municipal governing boards to create human resource agencies, such as the Employer. The statute also states, "It is the express intention of this chapter that agencies created hereunder shall be operated under local governmental control and shall be responsible for the administration of programs heretofore conducted by community action agencies, limited purpose agencies and related programs authorized by federal law." Miss. Code

[2] The Employer, Hinds County Human Resource Agency, is a human resource agency located in Jackson, Mississippi, created pursuant to Mississippi Code Annotated, Section 17-15-1 through Section 17-15-11, and is engaged in providing teaching, child care services, and transportation services to children involved in Head Start programs. During the past 12 months, a representative period, the Employer derived gross revenues in excess of $250,000 and purchased and received goods and services valued in excess of $5,000 at its Jackson, Mississippi facilities directly from suppliers located outside the State of Mississippi.

Ann. § 17-15-1. Such human resource agencies may not be private, non-profit corporations, although they may receive funds from private sources as long as those private funds are to administer programs identified in the statute. Section 17 further provides that for each human resource agency created, there shall be a governing board. The powers of the governing board include adopting bylaws, appointing senior staff (including an executive director), and determining programs and priorities. Miss. Code Ann. § 17-15-5. According to a September 21, 1989 Mississippi Attorney General Opinion, " . . . plans, priorities and activities of the human resource agency (should) be directed by a duly appointed and constituted governing board and such governing board may not delegate these responsibilities to other county officials." Cited in Miss. Code Ann. § 17-15-1.

There is no dispute that the Employer is exempt from federal and state income tax. The exemption from federal income tax is the result of a conclusion by the Internal Revenue Service that the Employer is a 501(c)(3) organization. There is also no dispute that on December 22, 1992, the Mississippi Attorney General issued an opinion which states:

> Since the Hinds County Human Resource Agency was created as an instrumentality of Hinds County under the authority of Section 17-15-1 et seq., the Agency would meet the definition of employer as provided in the retirement law and the employees of the Agency would be employees in state service for purposes of retirement coverage, should the Agency elect to participate in the Retirement System . . .

Thus, it appears that the Employer's employees may, but need not, participate in the state retirement system, and that the Employer must elect to participate. The record is silent with regard to whether the Employer elected to participate following receipt of the

opinion. There is also no dispute that the Employer has no authority to levy taxes or to condemn property, and it has no power of eminent domain. Finally, the record is clear that the Employer enters into its own contracts and leases, and applies for its own grants. Furthermore, the HCBS has no authority to sign contracts or leases for or seek grants on behalf of the Employer. Also, the HCBS is not liable for deficit spending by the Employer, and the Employer's day-to-day operations, budgeting and expenditures are monitored and determined by the Employer's Board of Directors and/or Executive Director.

The Employer also contends, and Petitioner did not dispute, that it qualifies for a sales tax exemption pursuant to Miss. Code Ann. § 27-65-105(a). That section exempts from the payment of sales taxes, sales of property to the "United States government, the State of Mississippi and its departments, institutions, counties and municipalities or departments or school districts of said counties or municipalities." In addition, the Employer is subject to the Public Purchase Act (requiring competitive bids), according to the Mississippi Attorney General because "it is a commission, board of (sic) agency created and operated under the authority of a county of the state Section, 31-7-1(b)." Similar opinions by the Attorney General for the State of Mississippi (all after requests by the Employer) express the view that as a governmental entity, the Employer may not conduct raffles, and must borrow money only as authorized by the legislature. In addition, the Mississippi Torts Claim Board issued a Certificate of Coverage for the Employer approving liability coverage for "your political subdivision," and the Mississippi Ethics Committee, which has authority to

issue advisory opinions "when any public official requests in writing such an advisory opinion," has issued opinions related to the Employer's operations.

The major sources of funding for the Employer's operations are federal funds or federal pass-through funds in the form of block grants to the State of Mississippi. Some funds are also received from the State of Mississippi, as well as Hinds County. For fiscal year 1996, Hinds County budgeted a contribution of $200,000, and the State of Mississippi contributed $183,447. This compares to an overall budget for fiscal year 1996 in the amount of $13,535,343. The Employer argues that with respect to the County's allocation, the HCBS has input as to the budgeting process, although the record is unclear what form that input takes.

The Employer's bylaws were developed after "protracted effort" by members of the Employer's staff and its attorney. The HCBS ratified the bylaws. The Employer also presents to the HCBS a copy of its annual audited report. The HCBS might call representatives of the Employer for clarification of the report, although the HCBS has not done so in the last four to five years. The Executive Director also makes a yearly presentation to the HCBS to justify the annual allocation from Hinds County and to explain progress on goals achieved. It is not clear whether this explanation is limited to goals related to the County's allocation, or is broader and relates to all Employer programs.

The Employer's bylaws provide that all regular and special meetings of the Board of Directors shall be open to the public in accordance with the Mississippi Open Meeting Law. While the Employer points to the definition of a "public body" contained in the Open Meeting Law, and contends that the Employer is a "public body" since it

opens its meetings, nothing in the record suggests that the Employer was required to comply with the Open Meeting Law. The Employer also contends that "its records are public records." However, it is not clear that records developed in connection with providing services to the poor are available to the public.

The Employer's Board of Directors consists of 15 members. According to the bylaws, the Board of Directors may consist of as many as 33 members, but no less than 15 members; and total membership must always be evenly divisible by three. Exactly one-third of the members are to be public officials or their designees. Currently, each supervisor on the HCBS is a member, or has designated someone in his/her stead. These five are referred to on the record as "public sector" members. Another one-third of the members are to be representatives of the poor. Each of the five supervisory districts "elects" a representative of the poor to make up this one-third. At the hearing the Employer suggested that these representatives of the poor are chosen by election among the electorate of the district. However, the Employer's bylaws state:

> Nominations and elections of representatives of the poor shall be held in each Supervisory District at locations convenient to poor people and accessible to persons with disabilities. Special emphasis shall be made to insure maximum feasible participation of poor people in the nomination and election process. . . Since it would not be feasible to require prospective voters to provide verification of income, all residents of Hinds County may vote in the Supervisory District in which they live.

The record is silent as to how the Employer maximizes participation of the poor. The record is also silent as to whether all polling places normally open for election of public officials are open for elections of representatives of the poor, or whether places of

election are instead limited to certain neighborhoods within a supervisor's district. Finally, the remaining one-third of the membership of the Board of Directors is selected by the Board of Directors from among organizations interested in participating. These organizations, if chosen by the Board of Directors, select the person within the organization for membership on the Board.

All appointments to the Board of Directors are "ratified" by the HCBS. This ratification includes elected representatives of the poor. However, according to the Employer's Executive Director, the HCBS has never refused to ratify a selection by the Board of Directors. On the contrary, on one occasion the Employer's Board of Directors pointed out to the HCBS that one of its appointees failed to meet qualifications set out in the bylaws.

The Employer maintains that NLRB v. National Gas Utility District of Hawkins County, Tennessee, 402 U.S. 600, 77 LRRM 2348 (1971), (herein Hawkins County) requires a conclusion that the Employer constitutes an administrative arm of the government. However, the United States Supreme Court cited several key factors that suggested to the Court the public character of the employer in Hawkins County that are not present in the instant case. These key factors include that the Utility District enjoyed the power of eminent domain; that it was required to hold hearings and issue written decisions, which were appealable to the county court; that it had the power to subpoena witnesses; and that its commissioners served for "nominal compensation." Also noted by the Supreme Court, and not present in the instant case, were the facts that the Utility District was required to publish an annual statement in a newspaper of general circulation; that the commissioners were appointed by a county judge (an

elected position) or were elected; and that the State of Tennessee could remove a commissioner for malfeasance or nonfeasance.

On the other hand, like the Employer herein, the Utility District was exempt from all taxes; was without power to levy or collect taxes; and its records were public and open for inspection. However, as noted, nothing in the record in this case suggests that records maintained of the Employer's service to its constituency are public.

In addition to the foregoing, the Employer contends that because the Mississippi Legislature created the Employer and because various agents of the State have referred to the Employer as an entity of the State, therefore the Employer is a political subdivision of Mississippi. In support of its position, the Employer points to the facts that the Mississippi Legislature requires that executive directors be bonded (should the human resource agency exercise its authority to appoint one) and requires the preparation of an annual audited report. The Employer also notes that changes to bylaws and new members of the Board of Directors must be ratified by HCBS; that the Employer's employees are eligible to participate in the public employees' retirement system for the State of Mississippi; that the Employer obtained liability insurance through the Mississippi Tort Claim Board; and that the Employer complies with the Public Purchase Act and seeks competitive bids. Finally, the Employer urges that because it can request and receive opinions from the Attorney General and Ethics Commission for the State of Mississippi, therefore the Employer is a political subdivision of Mississippi.

With regard to the Employer's position that the State of Mississippi has referred to it as a governmental entity in various forums, as the Supreme Court made clear in

Hawkins County, while State law declarations and interpretations are given careful consideration, they are not controlling. In fact, the Supreme Court adopted as correct law the holding of the Court of Appeals for the Fourth Circuit in NLRB v. Randolph Electric Membership Corporation, 343 F.2d 60, 58 LRRM 2704 (1965), at pages 62-63:

> 'Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no . . . patchwork plan for securing freedom of employees' organization and of collective bargaining. The Wagner Act is federal legislation, administered by a national scale. . . . Nothing in the statute's background, history, terms or purposes indicates its scope is to be limited by . . . varying local conceptions, either statutory or judicial, or that it is to be administered in accordance with whatever different standards the respective states may see fit to adopt for the disposition of unrelated, local problems.'
>
> Thus, it is clear that state law is not controlling and that it is to the actual operations and characteristics of [respondents] that we must look in deciding whether there is sufficient support for the Board's conclusion that they are not 'political subdivisions' within the meaning of the National Labor Relations Act.

Because the Employer's tax status and minimal regulation by Mississippi statutes are not distinguishable from other entities subject to the Board's jurisdiction, I also find that these factors do not support the Employer's claim that it is exempt from the Board's jurisdiction as a political subdivision. Further, nothing in the record suggests that the Employer is required to comply with Mississippi's open meeting law or that all of the Employer's records are available to the public. While it is true that the Attorney General for the State of Mississippi ruled that the Employer's employees are eligible to participate in the state retirement plan, the opinion is clear that the Employer must elect to participate, and, therefore, the Employer's employees are not automatically covered.

Moreover, the Mississippi Attorney General has clearly indicated that the Board of Directors is responsible for the operation of the Employer, and the Board may not delegate those responsibilities to county officials. Thus, none of the factors cited by the Employer, either individually or taken as a whole, support a conclusion that the Employer meets the first prong of the test set out in Hawkins County. Correctional Medical Services, 325 NLRB 1061 (1998); Enrichment Services Program, Inc., 325 NLRB 818 (1998); Concordia Electrical Cooperative, 315 NLRB 752 (1994). On the contrary, most of the factors cited by the Employer were also present in St. Paul Ramsey Medical Center, 291 NLRB 755 (1988), where the Board asserted jurisdiction. In that case, the medical center was created by the state legislature to be a non-profit "public corporation." Included in the 1986 act creating the employer were various provisions limiting the employer's tort liability, granting the employer the authority to issue bonds, requiring the employer to comply with the open meeting law and government data practices act, and exempting the employer from state sales and income taxes. Nonetheless, the Board asserted jurisdiction, noting that the act expressly provided that the medical center's powers would be equal to those of a private non-profit corporation. In the instant case, the Mississippi Attorney General has made clear that the Employer is to be governed by the Board of Directors and may not delegate its responsibilities to county officials. Moreover, it is clear that the Employer has the power (without HCBS input) to prepare an annual budget, to lease and/or purchase property, and to enter into binding contracts. While not incorporated, the Employer is clearly separately organized, managed and operated from other governmental units. While there is a clear distinction from St. Paul Ramsey Medical

Center insofar as the Minnesota Legislature expressly provided that the medical center's employees would be excluded from coverage under the state public employment labor relations act and the state public employees retirement act, a fact not present in this case, nothing in the record herein suggests that the State of Mississippi has affirmatively stated or concluded that the Employer's employees are public employees.

The Employer also contends that it is exempt from the Board's jurisdiction because its Board of Directors is responsible to public officials or the general electorate, and, therefore, it meets the second prong of the test set out in Hawkins County. The Board has reviewed the Employer's contention in a very similar case, Enrichment Services Program, Inc., 325 NLRB 818 (1998). In that case, like the instant one, the employer operated anti-poverty programs, was a Head Start provider, and was governed by a tripartite board of directors. Like the instant case, the employer in Enrichment Services included on its board of directors community leaders from the private sector, who constituted one-third of the board. It is undisputed by the Employer that these individuals are selected by the Board of Directors itself and are not responsible to public officials or to the general electorate, except that the HCBS ratifies their appointments. As noted, however, the ratification appears to be *pro forma*. Like Enrichment Services, another one-third of the Employer's Board of Directors is comprised of public officials (the HCBS members) or their representatives. These individuals are, therefore, responsible to public officials or the general electorate. However, "for an entity to be deemed 'administered by' individuals responsible to public

officials or to the general electorate, those individuals must constitute a majority of the board." 325 NLRB 819.

Thus, the issue is whether the one-third of the Employer's Board of Directors required to be representatives of the poor are responsible to the general electorate. In Enrichment Services, the Board held that the Hawkins County requirement is not met when the electors comprise only a limited group of voters. While the Employer suggests that all eligible voters residing in a geographic area may vote, the Employer's bylaws make clear that the focus of the vote is among "poor" persons at locations convenient to poor people, and that the Employer's goal is to maximize voter participation by "poor" persons, and not (by implication) the general electorate. In fact, from the bylaws, it appears that the only reason there are not limits on voter eligibility is there is no practicable way to verify income levels of voters. Therefore, I conclude that while all eligible voters residing in a geographic area may theoretically vote, practically the Employer's goal is that the one-third of the membership of the Board of Directors who are representatives of the poor reflect the desires not of the general electorate, but of the constituency served by the Employer. I reach this conclusion in part because I conclude, based on the bylaws, that polling places are limited to locations convenient to poor people. Accordingly, I conclude that the Employer's directors who are elected reflect the wishes of the poor and are not responsible to the general electorate within the meaning of Hawkins County.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I find that the following-described unit, as sought by the Petitioner and agreed to by the Employer, is appropriate for purposes of collective bargaining, and I shall direct an election among the employees in that unit:

> All full-time teachers, teacher assistants, family service assistants, bus drivers, bus driver/custodians, cooks, assistant cooks, and custodians employed at the Employer's Hinds County Head Start facilities; excluding center administrators, center clerks, family service workers, office clerical employees and other professional employees, managerial employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION[3]

An election by secret ballot will be conducted by the Regional Director for Region 15 among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the

[3] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 6, 1999**.

eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[4]

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO.

Signed at Minneapolis, Minnesota, this 22nd day of November, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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[4] To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 15 within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the New Orleans Regional Office, 1515 Poydras Street, Room 610, New Orleans, LA 70112-3723, on or before **November 29, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.